SUPREME COURT OF THE UNITED STATES.

No. 68.

THE MAYOR, RECORDER, ALDERMEN AND COMMON COUNCIL OF GEORGETOWN, APPELLANTS,

VERSUS

THE ALEXANDRIA CANAL CO. & WILLIAM TURNBULL.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE COUNTY OF WASHINGTON, D. C.

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Style of Court.

DISTRICT OF COLUMBIA, ss.

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of November, being the twenty-eighth day of the same month, in the year of our Lord one thousand eight hundred and thirty-six, and of the independence of the United States of America the sixty-first:

Present WILLIAM CRANCH, Chief Judge.
BUCKNER THRUSTON & JAMES S. MORSELL, Assistant Judges.
ALEXANDER HUNTER, Esq., Marshal.
WILLIAM BRENT, Clk.

In the record of the proceedings of the said court among others are the following, to wit:

Parties.

THE MAYOR, RECORDER, ALDERMEN & COMMON COUNCIL OF GEORGETOWN, *vs.* THE ALEXANDRIA CANAL COMPANY & WILLIAM TURNBULL. } In Chancery.

Be it remembered, that heretofore, to wit: on the eighth day of July, in

the year of our Lord one thousand eight hundred and thirty six, the said complainants, by James Dunlop, Esq., their solicitor, filed in court here the following bill of complaint and exhibits, to wit:

Complainants' Bill.

To the Honorable the Judges of the Circuit Court of the District of Columbia, for the county of Washington, sitting as a Court of Equity.

The bill of complaint of the Mayor, Recorder, Aldermen and Common Council of Georgetown, in behalf of themselves and the citizens of said town, respectfully sheweth:

That the Alexandria Canal Company, whom your orators pray may be made defendants to this bill, by their engineers, agents, workmen and laborers, are now, and for some time past have been engaged in constructing an aqueduct over the Potomac river at Georgetown, within the corporate limits thereof, immediately above and west of the principal public and private wharves of the town. The river Potomac above and the said aqueduct *and* below it continuously outward to sea, is a public navigable highway, having sufficient depth of water in its main channel, throughout its whole course aforesaid, for sea vessels drawing not more than sixteen feet of water. The free use of this river and its protection from obstruction is secured to all the people residing on its borders or interested in its navigation, by a solemn compact between the States of Virginia and Maryland, made in the year 1785, which is now referred to and prayed to be taken as part of this bill.

Georgetown is a commercial place, deriving its chief support and prosperity from the trade of the Potomac, and is vitally interested in maintaining and increasing the present depth of water in the said channel of said river; and at the wharves of the town, large sums of money have been heretofore expended by your orators out of the town treasury, in deepening the water on the bar across the main channel, immediately below the town and north and west of the long bridge across the Potomac. The sum expended between the year 1803 and 1824 out of the town treasury, in excavating, by dredging machines, (and erecting a causeway) a cut or channel through said bar, exceeds the sum of eighty-seven thousand dollars, cheerfully contributed by the people of the town to secure the safe access of sea vessels of a large class to their port and harbor. The Congress of the United States, by an act passed the 2d March, 1833, herewith referred to and made a part of this bill, made a liberal appropriation further to improve the navigation of the river below the town; and your orators have expended out of that appropriation, upwards of thirty-six thousand dollars in widening and deepening the cut or channel through and over said bar. The progress made and the results accomplished from this last expenditure, and detailed in the report of the town commissioners, hereto annexed, and prayed to be taken as part of this bill. (Copied in page 14.)

The appropriation and expenditure of the large sums aforesaid, manifest to the court the vital importance of the trade and navigation of the river to the people of Georgetown, and entitle its corporate authorities as they are advised, to invoke and receive the aid of your honorable court so far as it can be properly afforded, to secure to them the fruits of their labors and expenditures in improving said navigation, and protecting it from injury and obstruction.

The proposed aqueduct of defendants, now in the progress of construction, is designed to rest on massive stone piers, having their foundation in the solid bottom of the river, and consisting entirely of stone masonry; one of these piers has been completed, and another is now under way in upwards of twenty feet water. In constructing the pier already erected, coffer dams were used, and to make them tight a double row of piles were framed, forming an inner and an outer dam, and clay used between the rows of piling—the inner and outer dams aforesaid. The complainants, and the people of the town whom they represent, have always objected, and now object to the use of clay within the dams; they felt apprehensive that injury would result to the harbor of the town and the navigation of the river from the use of clay and earth in the river and the construction of the said pier as aforesaid, and expressed their apprehensions to the officers of said Canal Company. The Mayor of Georgetown was assured that care should be taken that no injury should happen to the harbor or river, that the clay and earth used between the dams should be carefully removed after the completion of the pier, and not suffered to be swept off by the ordinary currents of freshets to the injury of the harbor and navigation below. This assurance has not been fulfilled—on the contrary, your orators believe that much of said deposite of earth has been carried off into the channel and river below. In constructing the pier now under way, a similar coffer dam is framed with a double row of piling filled in with earth as before, between the inner and outer rows of piling. Not content with the unopposed use of earth and clay between the said rows of piling, the defendants have lately, to the great surprise of your orators, deposited very large masses of clay and earth outside the outer rows of piling, in the unconfined and open river near their works, with the avowed object, as they say, of strengthening and tightening their coffer dam. This operation was carried on, towards the close of the last month, for the space of ten days or more, with thirty or forty laborers emptying earth and clay into the channel of the river by the scow load, and has been again renewed within a day or two, and since the interview with Capt. Turnbull hereinafter mentioned. The affidavits of respectable citizens are hereto annexed, marked 1, 2, 3, 4, 5, and prayed to be received and taken as part of this bill of complaint—(copied in page 19, &c.) Your orators, as soon as they were advised of this proceeding upon satisfactory proof, and could be assembled to act on the subject, passed the resolution, a copy of which is hereto annexed, marked and caused the same to be communicated to Capt. Turnbull, the principal engineer and officer in charge of the defendants' works, sincerely desirous to avoid, if possible, any controversy with defendants on this subject. The mayor and recorder, and John Kurtz and Walter Smith, citizens of the town, personally called on the said engineer to learn his views, and to carry to him the sentiments and feelings of the people and authorities of the town. In this interview your orators, by their said agents, protested against the deposite of earth and clay outside the dam, in the open river, and endeavored to expose the injury which in their judgment would necessarily result to the harbor of the town and the channel on the bar below, into which the said earth and clay would be carried by the ordinary currents, as well as by freshets in the river, to the great diminution of the depth of water there, and material injury of our navigation and trade.

Your orators by their said agents further averred, that the defendants could well construct their works without resorting to these unlawful and

injurious means, and without resort to the use of earth, either inside or outside the dams. The agent of the defendants asserted the right of his principals, and said he was authorized by them to deposite earth and clay in the open river, outside the dam, when he thought it necessary for the security of their works, and without regard to the consequences to your orators, expressing at the same time his opinion that the injury would be inconsiderable—said he had then ceased the deposite of earth, but should renew it again, if his works required it,—did not deny that the works could be constructed without the use of earth outside the dam, but that his duty to his principals required him to consult economy; said that the subject had better, and indeed would have to be brought to issue before your honors; and, as your orators understood, maintains and asserts the right of the defendants to construct their aqueduct upon the cheapest plan, without regard to injury to result to your orators, to the harbor of the town, and the navigation below, from the said means used in pursuing and carrying into effect that cheapest plan. Your orators are advised that the defendants are bound so to exercise their right to build their aqueduct as not to invade the right of your orators, or to injure or obstruct the navigation of the said harbor and river. They have been informed, and believe and aver, that the aqueduct can be built without the use of clay and earth, as herein set forth, inside or outside the dams. They aver that the large masses of earth and clay already thrown into the river by defendants at their works, necessarily tend to injure the harbor of Georgetown, and to fill up and diminish the depth of water in the cut or channel through the bar below the town; the ordinary currents in the river, as well as freshets, must and do sweep away large portions of said earth and clay into the said harbor and cut—and they believe, and aver, that to some extent and materially this has already occurred. The depth of water on the bar is believed to be at least three feet less now than it was last fall, and your orators believe has been in part and materially occasioned by the said works of the defendants, and the means aforesaid used by them in their construction. Your orators apprehend still further injury, unless the defendants are restrained by the authority of your honorable court, avowing as they do their purpose to proceed as they have done.

It was asserted by Capt. Turnbull that the clay and earth which he had thrown into the river outside of the coffer dam was but a substitute for that which had been carried off from around it by the recent freshet, and which, as it was understood, was swept off to the bare rock at the bottom of the river, supposed to be equal to an average of about twelve feet in depth of mud and sand. He admitted that the space between the several piers and coffer dams did not exceed between forty and fifty feet, thus occasioning, through such openings in time of freshets, an extraordinary and rapid torrent and flow of water thus confined at such points; and it can be shown in evidence, and is averred, that except at such positions, so confined, there is no other part of the river within the line of the aqueduct, or elsewhere, where such effects were, or can be observed, and more especially where the course of the channel remains unobstructed. The inevitable conclusion is, and your orators charge that their own works—those of the Alexandria Canal Company alone—have produced the vacuum which they thus claim the right to supply; that the material so removed most probably now forms a considerable part of the filling up of the channel recently excavated at the expense of the corporation of Georgetown. And that in the event of other

and repeated freshets to which the river is naturally subject, the deposite and filling in around and about, and within the coffer dams, now the subject of this complaint, may and will in like manner be subject to a similar sweeping off and removal, and so on in succession, and ad infinitum, until every pier of the aqueduct (some eight or ten more in number,) shall have been completed—and by which time, under the same, or a similar process, the entire harbor in front of Georgetown will be a string of bars and sand-banks; and all avenues to its approach through its regular channel below, even if any longer desirable, entirely choked up and destroyed. Thus if earth and clay in large masses are to be thrown into the open river at the discretion of the defendants, and that discretion is to have no limit but the security, or supposed security and progress of their works, and economy in their construction, the harbor of Georgetown, and the navigation of the river below, may be totally obstructed and destroyed.

Your orators further state that, by the compact aforesaid between the States of Virginia and Maryland, it was not competent for either of these States to erect any work whatever in the river Potomac, whereby the free navigation of that river could be in any manner impaired—and this compact and the laws of the said States establishing the same, were adopted and continued in full force when the jurisdiction of the general government was assumed over this District, so that the said compact still continues in force, and the power of exclusive legislation in the Congress of the United States does not give to that body any authority to violate the said compact, by allowing any such works as it prohibits to be erected in this District. The provisos also, in the acts of cession, reserve these rights to your orators, and all others interested. And your orators presume that Congress did not intend, by the law incorporating the defendants as the Alexandria Canal Company, to give them any power, by the erection of their aqueduct, to impair the navigation of said river, but intended that the same should be so constructed as not to impair the same. And your orators, and all others interested in the navigation of said river, had a right to expect that the said defendants would erect their said work by such a plan and such operations as would avoid all danger and obstruction to the said navigation.

But your orators charge that the defendants, in violation of said compact of the acts of cession, and of the law of their incorporation, have adopted a plan for their said work, and are now attempting to construct the same in a way that must necessarily greatly impair the navigation of the said river, both below and above it—and this not only by the wanton and unlawful deposite of earth and other materials in the said river in the construction of their piers, as already hereinbefore complained of, but by constructing their said piers of stone, and in such way as to increase greatly the force of the current, thereby carrying down into the harbor of Georgetown and the channel below it, a large quantity of earth and mud, washed away and borne down by the increased velocity of the current, and endangering, by the increased momentum of the current, the wharves and houses in Georgetown, but also constructing said piers of insufficient height to enable vessels navigating said river to pass safely under the said aqueduct, and by constructing a causeway on the southern side a considerable distance into the river, thereby narrowing the passage for the water, and forcing it over on the Georgetown side. And your orators call upon the said defendants to produce to your honors the plan of the said work, and to state the manner of its intended construction.

And your orators further charge that, however willing they might have been to have offered no objections to the work of the defendants, which they considered so important to their interests, and so useful as a public improvement, although seriously affecting the rights and interests of your orators, while they hoped that a due regard to those rights and interests would be allowed by the defendants, and the persons they might employ in the said work, and while it was supposed that the defendants would be able to procure such a subscription to their stock, or such funds otherwise, as would justify the expectation that their said contemplated works would be completed; yet now that it is manifest that said defendants are, for the sake of economy, as they allege, attempting to execute their said work so as to injure the navigation, without any regard to the rights or interests of your orators; and are also, as your orators charge, without adequate means and resources to complete the said work, either by a sufficient subscription of stock, or in any other way, so that the said aqueduct will, as your orators believe, be left unfinished and productive of no benefit, either to the defendants or the public, and continue to be only an unnecessary and useless obstruction to navigation, and an injury to your orators and others, they feel justified in complaining and objecting, and do object to the further progress of said work, either in the way hereinbefore complained of, or in any other way, till the defendants shall show, to the satisfaction of your honors, that they have sufficient funds for the completion of the same. Your orators charge, that they understand and believe that the stock subscribed to said company, and all other funds and resources of said company, amounts to a sum far less than sufficient to complete the work, of which your orators are informed and believe, the greater portion has been already expended on the said aqueduct and their other works, so that they are left without adequate means to finish the said aqueduct—and they pray that the said defendants may be compelled to exhibit and shew to your honors what will be the probable cost of finishing their works, and what are the means to be applied to the same.

Your orators are without remedy in and by the strict rules of the common law. The injury done, and threatened to be done, is irreparable in its nature, and of very extensive mischief to your orators and the citizens of Georgetown, and can only be adequately relieved and prevented by the interposition of this honorable court. Your orators seek and ask, at the hands of your honors, full relief in the premises. And to this end they pray that the United States writ, and writs of subpœna, may issue to the defendants, the Alexandria Canal Company, and Capt. William Turnbull, directed, commanding them to be and appear before your honors, and upon oath to answer to your orators all the matters and things herein charged, as fully and particularly as if the same were here again repeated, and they thereto specially interrogated. And also that the United States writ, and writs of injunction may issue, directed to the said defendants, their engineers, officers, and servants, strictly enjoining and prohibiting them, and each of them, from further depositing earth and clay in the Potomac river, outside or inside their coffer dams, or otherwise to the injury of the navigation of the said river and the harbor of Georgetown, till the further order of the court in this cause. And your orators asking such other and further relief in the premises as to your honors may seem right and agreeable to equity, will as in duty bound ever pray, &c.

JAMES DUNLOP,
Sol'r for Compl'ts.

DISTRICT OF COLUMBIA,

Washington County, sct.

This 8th day of July, 1836, personally appears John Cox, Mayor of Georgetown, in open court, and makes oath that the facts and matters set forth in the aforegoing bill are true as stated, so far as stated of his own knowledge; and so far as stated of the knowledge of others, he believes them to be true, as stated.

Sworn to in open Court.

WM. BRENT, Cl'k.

Report of Town Commissioners.

Report of the Town Commissioners, referred to in the bill, page 3.

GEORGETOWN, January 26, 1836.

To the Hon. the Corporation of Georgetown.

GENTLEMEN: Having received the report of the engineers employed in relation to the channel and the navigation below the town, together with their surveys and estimates thereupon, it becomes our duty to submit them to you, and with them such explanatory observations as may be necessary to present to you a correct view of that interesting subject.

The books of diagrams, No. 1 and 2, exhibits the profile of the channel as now existing, commencing at pile No. 3, and ending at pile No. 20, the lower extremity of the cut.

The plat No. 3 presents a view of the ground plan of the cut, for the same distance, exhibiting the depth of water, and soundings at extreme *low tide*—to which is to be added that of common *full* tide, say four feet.

Keeping in view the resolve of the corporation last winter, requiring a limitation of expenditure upon this work so as not to exceed the sum first contemplated, we deemed it our duty to restrain the operations upon the channel within a width of 140 feet, and to a depth, at low water, of fifteen feet; and affording, when completed, a passage at usual high water of nineteen feet in depth.

The excavation within this space, during the present year, amounts as per estimate of the engineer, prior to the completion of his surveys, to 10,068 cubic yards, and subsequently, to 58,294 cubic yards—leaving yet to be effected, about 16,216 yards, consisting chiefly of spars or projections of the bar, along the eastern margin of the channel. This, it is to be presumed, can be readily accomplished within the months of April and May.

Besides the excavations made *within* the limits above described, we found it necessary, at the *lower* extremity of the cut, to excavate and remove an extensive angle of the bar, which obstructed a free and easy connexion with the main channel immediately below, leading towards the bridge. The quantity of this excavation was 4,815 cubic yards.

The document No. 4 exhibits an abstract view of the entire cost of the work, up to the present period, including contingent expenses, so far as yet ascertained. And it shows likewise the extent of drafts made by us up the clerk of the corporation in payment thereof; there appearing a balance yet in favor of the contractors, Messrs. Ellicotts, of $3,000, retained, according to the provisions of the contract, as a surety for the completion of

the obligations; and which, when complied with, will entitle them to the payment of this balance. They indeed ask for it now, and have addressed a letter to us on the subject, proposing to give their bond, with security, for $5.000, as a substitute. But as we had no authority to agree to such a change of the terms of the contract, we have only yielded to their request, in laying it herewith before you:—

The work yet remaining to be done, in the coming season, is the removal of the 16,216 cubic yards, before mentioned, yet remaining within the channel of 140 feet wide, through the upper bar. This, at 30 cts. per cubic yard, will amount to - - - - - - - - - $4,864 80

And with its necessary contingent expenses added to the amount of the statement No. 4, will present when done, an aggregate, as we suppose, rather less than - - - - - - 42,000 00

And the removal of the bar below the bridge, near the mouth of the eastern branch. This it is believed can be done by mid-summer, and for the sum appropriated, viz: - - - - 5,000 00

We have much pleasure in acknowledging the valuable and efficient services rendered in the prosecution of this work, by the intelligent engineers, Capt. Turnbull and Lieut. Ewing, to whom had been assigned this duty. Those services have always been rendered promptly and satisfactorily, and their estimates and calculations, made with much care and attention, merit, as we believe, full confidence.

In closing this report, we cannot but take the occasion to congratulate your honorable body upon the success of this undertaking, so far achieved; and upon the favorable prospect of its early entire accomplishment, as proposed.

And remain, respectfully, gentlemen,
Your very obedient servants,
W. SMITH,
J. KURTZ,
WILLIAM LAIRD, } Commissioners.

Statement showing Expenditures in excavating Channel, &c.

Statement showing expenditures in excavating the channel through the bar, below Georgetown, commenced in 1833, and continued up to 31st December, 1835; and thence inclusive to the present date:

Expenses in the year 1833, for preliminary and experimental surveys, &c. - - - - - -	236 31
Estimate of excavation on the bar, per contract in 1834, 38,570 cubic yards, a 30 cents - - - -	11,571 00
Contingent expenses, engineers' pay, &c. during the year 1834 - - - - - - -	816 04
Estimates of excavation on the bar, per contract in 1835, prior to completion of re-surveys made by scow measure reduced, 10,068 cubic yards, a 30 cents - - -	3,020 40
Estimate of work done in the same year, below the pile No. 20, in excavation of an angle of the bar, 4815 cubic yards, a 30 cents - - - - - -	1,444 50
Estimate of excavation done during the residue of the year 1835, within the measured space, by survey and certificate, 58,294 cubic yards, a 30 cents - - - -	17,488 20

Contingent expenses, exclusive of pay of engineers, &c. &c.	680 50
Amount of expenses as adjusted and ascertained up to this date - - - - - - - -	$35,256 95

The bill drawn upon the Clerk of the Corporation, in payment of the same, have been as follows, viz:

In the year 1833 - - - -	236 31	
Do do 1834 - - - -	4,866 04	
Do do 1835 - - - -	26,269 72	
Do do 1836 - - - -	884 88	
		32,256 95

Leaving a balance yet due to the contractors, Messrs. Ellicotts, according to contract, as security for its final completion - - - - - - - - $3,000 00

Georgetown, January 26, 1836.

W. SMITH,
J. KURTZ,
WILLIAM LAIRD, } Commissioners.

Resolution and Affidavits referred to in the Bill, page 5.

A resolution relating to the Alexandria aqueduct, and the works of the Alexandria Canal Company in Potomac, at Georgetown.

Resolved by the Board of Aldermen and Board of Common Council of the Corporation of Georgetown, That the Mayor be, and he is thereby, authorized and requested to notify Captain Turnbull, the engineer of the Alexandria Canal Company, that the corporation of this town is satisfied by credible testimony, that serious injury has been already done, and will unavoidably result to the navigation of this town from the large quantities of clay and earth thrown, and in progress of being deposited in the river, around and outside their coffer dams, and otherwise, in the construction of their works; that the said engineer be immediately required to desist from obstructing and filling up the harbor and river as aforesaid. And upon his failure so to desist, the Mayor is directed to advise with the Recorder, and adopt such legal measures as may be lawful, to arrest such unlawful proceedings of the Alexandria Canal Company, their agents, and officers.

WILLIAM JEWELL,
President of the Board Common Council.
JAMES DUNLOP,
Recorder and President Board Aldermen.

25th June, 1836. Approved,

JOHN COX, Mayor.

A Copy. Test:

JOHN MOUNTZ, Clerk.

Affidavit of John Davidson.

John Davidson makes oath, this 7th July, 1836, that he is the renter of the ferry, late Mason's, from Georgetown to the the opposite shore, about

one hundred and thirty yards below the Alexandria aqueduct. That since the works at the aqueduct have been in progress, the water on the Virginia side has diminished in depth, and at low tide and in high northwest winds it is difficult to get along with the ferry boats, and deponent believes this shoalness of water has been in great part caused by the earth thrown into the river at the Alexandria aqueduct.

Sworn to before

J. HOLTZMAN, J. P.

Affidavit of J. T. Dennison.

John T. Dennison makes oath, this 6th day of July, 1836, that within the month of June last past, he has seen the agents of the Alexandria Canal Company throw into the Potomac river, outside their coffer dam, a large quantity of earth and clay, for more than a week together, and he thinks for at least ten days. That they had two scows and about thirty hands employed in the work. That deponent believes they must have so thrown into the river not less than one hundred and sixty cubic yards of earth and clay a day. Deponent further states, that in the late freshets in the river, about twenty feet in length of their causeway to the abutment was swept away into the river. The part of the causeway swept away, he thinks, was about six feet deep, and forty feet wide.

Sworn to before JOHN COX.

John Thomas Dennison further makes oath, this 8th July, 1836, that the agents of the Alexandria Canal Company are now, and for days past have been, throwing earth into the open river, between their causeway and the abutment dam.

Sworn to before JOHN COX.

Thomas Brown's Affidavit.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

Thomas Brown makes oath, this sixth day of July, 1836, that the agents of the Alexandria Canal Company, within the month of June last past, have thrown into the Potomac river, outside their coffer dams, into the open river around said dams, a large quantity of earth and clay, that they have had employed in said service two large scows, carrying, he believes, thirty tons each, and about thirty or forty hands, taking earth from the Virginia shore, close to the water's edge, for a week or ten days together, as stated by the overseers of the laborers, emptying the earth from the scows into the river, outside the dams. That the amount of earth so thrown into the river, deponent verily believes has injured, and will seriously injure the harbor of Georgetown, and the navigation of the river.

Sworn to before JOHN COX.

Arnold Boone, this 6th day of July, 1836, affirms to the truth of the above statement made by Thomas Brown.

Affirmed to before JOHN COX.

Affidavit of William Easby.

William Easby being called on by the Mayor of Georgetown, deposes and makes oath, this 7th July, 1836, that he is a practical mechanic, and has some experience in the construction of coffer dams, for laying masonry in water, that he made the dam and foundation for the tide lock at Georgetown, and built a large coffer dam for the navy yard at Washington.

Deponent is acquainted with the Potomac river at the point where the Alexandria Canal Company are constructing the piers to support their aqueduct over the river.

He is of the opinion and confident that the coffer dams for said piers may be made tight without throwing earth or clay outside the dams.

He also believes that there is no occasion for the use of clay and earth within the dams between the two rows of piling, except at such points in the river where the water flows over a bare rock bottom, without mud to hold the points of the piles, in which case it would be necessary to use earth within the rows of piling.

July 7, 1836. WILLIAM EASBY.

Sworn to before me, JOHN COX.

Affidavit of William Alnutt.

William Alnutt makes oath, this 8th July, 1836, that on Tuesday, the 5th July, 1836, he saw the agents and laborers of the Alexandria Canal Company throwing earth and clay into the open river, ouside the coffer dams.

Sworn to before JOHN COX,

Letter from John Cox to Captain Turnbull.

MAYOR'S OFFICE, Georgetown, 25th June, 1836.

SIR: Above you have a copy of a resolution of this corporation, by which you will find that I am required to notify you to desist from having any clay or earth put into the river, around and outside the coffer dams, and otherwise in the construction of the works of the aqueduct of the Alexandria Canal Company. I therefore now require you forthwith to desist from having any clay or earth put into the river, around and outside of the coffer dams, or otherwise in the construction of these works.

With great respect, I am, sir,
Your obedient servant,
JOHN COX, Mayor.

To Captain WM. TURNBULL, Engineer.

Basil Wood's Affidavit.

This day personally appeared Basil Wood, of Georgetown, before me the subscriber, a justice of the peace in and for Washington county, District of Columbia, who being sworn according to law, made oath that he delivered to Captain William Turnbull a paper containing the within notice, of which the within is a true copy; and that he at the same time delivered to the said Captain William Turnbull the resolution of the corporation of Georgetown stated within, this day, the 25th June, 1836.

Sworn to before me, JAMES GETTYS.

BOARD OF ALDERMEN,
Friday, January 3d, 1834.

The memorial of John Allen and Eliphalet Miller, employed to erect and make the coffer dams intended to receive the piers of the Potomac aqueduct, praying that they may be permitted to use around the dam now in the river a small quantity of material, such as sand, gravel, clay, &c., whereby to fill the joints, not exceeding 400 cubic yards, to make said dam tight; they agreeing to take out and remove, if required, a quantity of material equal to that which they may put in the river, and deposite the same in some place to the satisfaction of the corporation, was read; whereupon Mr. Dunlop offered a resolution relating to the memorial of John Allen and Eliphalet Miller, which was read three times and passed.

A copy from the Journal.

Test: JOHN MOUNTZ, Secretary.

Extract from the Journal of the Board of Common Council of the Corporation of Georgetown, January 6, 1834.

"The memorial of John Allen and Eliphalet Miller, employed to erect and make the coffer dam intended to receive the piers of the Potomac aqueduct, together with the resolution in relation thereto, was received from the Board of Aldermen, was read, and on motion, laid on the table."

A true copy from the record.

W. A. RIND, Clerk B. C. C.

The above resolution and memorial were never after taken up by the Board—and the papers are at present mislaid.

July 14, 1836. W. A. RIND.

DISTRICT OF COLUMBIA, *Washington County, ss.*

This 14th July, 1836, William A. Rind, Clerk of the Board of Common Council of Georgetown, makes oath, that he has made deligent search for the memorial and resolution above referred to, and has been unable to find them, and that they are lost or mislaid. He further makes oath, that the said papers were in his custody, and still ought to be, having been sent down to the lower Board by the Board of Aldermen.

Sworn to before JOHN COX.

To the committee appointed by an ordinance of the Corporation of Georgetown, to examine and report upon the state of the river, in respect to its soundings, &c. from Georgetown to the Virginia shore:

Gentlemen: Below I return you the result of the various soundings and measurements made in conformity to your instructions across the river, and also near and about the piers now constructing. Having no ready means at hand by which I could take distances on the water, it became necessary for me to guess at the distances between the points at which I took the soundings. To enable me to make it more intelligible to you, I have deemed it best to give it in form of a diagram, giving it connection with the piers now constructing in the river, by which you will be able to see at once the points at which soundings have been taken, and the depths:

[For plat see original, page 26.]

Your request that I should examine the character of the soundings round the coffer dams, for the purpose of ascertaining whether there has not been clay thrown outside the works, has been done with due care. I find in pushing a rod down from one to two and a half or three feet at places, there was nothing adhered to it but yellow clay, evidently the same material of which the bank on the Virginia side has been formed. This appearance of clay extends out for some fifty or sixty feet from the coffer dams on the lower ends.

The committee will please excuse my brevity, as the short time allowed me was quite insufficient to go more into detail.

Respectfully submitted,

By your obedient servant,

20th November, 1835. LEWIS CARBERY.

To E. M. LINTHICUM, Esq.
Chairman of Committee.

Statement of Lewis Carbery.

Lewis Carbery to General Smith.

SIR: In obedience to your request, I have made the various soundings and estimates required of me, so far as any thing like reasonable data could be obtained, of which I herewith return you the result, viz:

The soundings taken on the 7th and 13th instants, and compared with those taken by me in November last, afford evidence that no sensible or material change has been occasioned by the recent unusually high freshet in the bottom of the river across in the line adopted for the location of the aqueduct until after leaving Georgetown side. I came within about seventy-five feet of the pier, where I found, by the sounding recently made, the water to suddenly deepen from a depth of sixteen and eighteen feet to a depth of 24, 25, 26, and at one point as much as 28 feet. The soundings also up and down the current go to develop the same fact, to wit: that around and about the pier and coffer dams, and for the distance of seventy-five feet, and one hundred feet off in places, I found the bottom of the river completely troughed out to increased depth compared with the last fall's soundings, of from six to ten and twelve feet, and within the line between the rows of sheet pilings of the coffer dam, since removed, I found an increased depth of twenty or more feet. Reducing the shape of the bottom thus troughed ou*ght* to a regular figure, and allowing for the spaces occupied by the coffer dam and pier, which suppose to be two hundred feet wide across the current, and three hundred up and down it, and of an average depth of eight feet, it will give a cube of $300 \times 200 + 8$, which gives 17,777 cubic yards. The cut made in the channel below, I understand to be in length 5000 feet, and in width at bottom 130 feet. The above quantity lodged in deposite uniformly over the bottom of the cut, would give a depth of 1 foot and 354-1000 of a foot, but as this distribution can never be expected to take place, nor that the whole quantity would find a lodgment in the limits of the cut, but unite with the alluvian deposite drifted from elsewhere, would find a resting place across the channel and river, where it finds the water to have the most sluggish motion, or where the current and tide in this location meet in a point approaching nearest to an equilibrium where the bar will be found to form; in that case it will be ready seen that a far less than the aforesaid estimated

quantity would stop the navigation of the larger vessels intended to trade at our town, if suffered to remain and accumulate.

Respectfully submitted,

By your obedient servant,

14th July, 1836. LEWIS CARBERY.

To General W. SMITH.

Certificate of Lewis Carbery.

I certify that on taking the soundings across the Potomac river at Georgetown in the line the aqueduct is now constructing, on the 7th instant, and comparing said sounding with other sounding taken across the same line on the 20th November, 1835, I find no very immaterial change in the depth of water, allowing for difference of tides, until I came within from 50 to 75 feet of the pier that is now finished, where I found a sudden and considerable change, the water being now around and about the pier and coffer dam very considerably deeper than it was found to be last year; in places I found a difference of 8, 10, 12, and 13 feet, and where the coffer dam was, of more than 20 feet.

8th July, 1836. LEWIS CARBERY.

Letter from J. Dunlop to Captain Turnbull.

GEORGETOWN, July 5, 1836.

To Captain TURNBULL.

DEAR SIR: At the request of the court, I hereby give you notice that the corporation of Georgetown will apply to the court, on Thursday morning next, the 7th instant, for an injunction to restrain the Alexandria Canal Company from depositing earth and clay in the Potomac river, outside and around their coffer dams, or otherwise, to the injury of the harbor of Georgetown and the navigation of the river.

With great respect, your obedient servant,

JAMES DUNLOP,

Solicitor for Corporation of Georgetown.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

On this 7th July, 1836, personally appears Henry Trunnell before the subscriber, a justice of the peace for the county aforesaid, and makes oath on the Holy Evangely of Almighty God, that he delivered the original, of which the above is a true copy, to Captain Turnbull on the 6th instant.

Sworn to before JOHN COX.

Letter from J. Dunlop to T. F. Mason.

GEORGETOWN, July 6, 1836.

DEAR SIR: At the request of the court, I hereby give you notice that the corporation of Georgetown will apply to the court on Thursday morning next, the 7th instant, for an injunction to restrain the Alexandria Canal Company from depositing earth and clay in the Potomac river, outside and around their coffer dams, or otherwise, to the injury of the harbor of Georgetown and the navigation of the river.

With great respect, your obedient servant,

JAMES DUNLOP,

Solicitor for Corporation of Georgetown.

DISTRICT OF COLUMBIA, *County of Washington, to wit:*

On this 7th July, 1836, personally appears Henry Trunnell before the subscriber, a justice of the peace for the county aforesaid, and makes oath on the Holy Evangely of Almighty God, that he delivered, on the 6th instant, the original of which the above is a true copy to Thompson F. Mason.

Sworn to before JOHN COX.

An Act to improve the Navigation of the Potomac River.

An act to improve the navigation of the Potomac river between Georgetown and Alexandria, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, in order to aid the citizens of Georgetown in removing the obstruction to their navigation, by causing the cut already made through the bar, below the town, to be enlarged and deepened, and for the further purpose of enabling them to make a free turnpike road to the District line on the Virginia side of the river, and to purchase of the present proprietors, and make for ever free, the bridge over the Little Falls of Potomac river, the sum of one hundred and fifty thousand dollars be, and the same is hereby appropriated, to be paid out of any money in the Treasury not otherwise appropriated.

SEC. 2. *And be it further enacted,* That the said sum shall be paid, from time to time, by the Secretary of the Treasury, to the order of the corporation of Georgetown, in such sums as to enable the said corporation to effect the purposes aforesaid.

SEC. 3. *And be it further enacted,* That before the said sum be paid over to the said corporation, it shall pass an ordinance to make said road and bridge free, and to be kept in repair by said corporation for ever.

Approved, March 2, 1833.

Motion for Injunction, and set for Hearing.

Whereupon the said complainants, by their solicitor aforesaid, moved the court to grant them an injunction, which motion was set for hearing, for Thursday, the fourteenth July instant, to hear argument of counsel, &c.

And now, to wit: the said fourteenth day of July, in the year of our Lord one thousand eight hundred and thirty-six, to which said day the said cause was continued, comes into court here, as well the said complainants, as the said defendant, by Richard S. Coxe, Esquire, their solicitor, and the said defendants, by their solicitor aforesaid, filed in court here the following answer and exhibits, to wit:

Defendant's Answer to Complainant's Bill.

The answer of the Alexandria Canal Company to the bill of complaint of the Mayor, Recorder, Aldermen and Common Council of Georgetown, on behalf of themselves and the citizens of said town.

This defendant now and at all times saving and reserving all and all manner of benefit and advantage that may be had and taken to the many and manifold errors, uncertainties, imperfections and defects in the said bill of complaint contained, nevertheless for answer thereto, or unto so much thereof as it is advised that it is material or necessary for it to make answer unto, it answers and says—

That this defendant is advised and believes that the allegations and averments in the said bill contained, if true as therein set forth, which however this defendant by no means admits, do not make, or create, or exhibit, any case upon which this honorable court can grant the relief prayed in said bill, or any other relief whatever against this defendant, its officers, or agents. This defendant being advised that the corporation of Georgetown, who are the complainants in said bill, have no right, title, or interest in the waters of the Potomac river, which is averred to be a public navigable river, and a common highway; and that said town of Georgetown has no estate, right, or title to any property beyond its own corporate limits, and no right or title not expressly given or necessarily implied in and by its charter of incorporation; and although it is averred in said bill, that the works which this defendant is engaged in constructing, is within the said corporate limits; but this, this defendant denies, and denies further, that any part of the injury or damage complained of, is within said corporate limits. And this defendant is further advised, and also submits to your honors, that the said complainants have no legal authority or equitable right to file their said bill for or on behalf of any of the citizens of Georgetown, or any other individuals or citizens whatever, in relation to any matter or thing charged, averred, and set forth in said bill of complaint. And it is further advised, and insists before this honorable court, that the rules and principles of equity do not advise the said complainants to come into a court of equity upon any of the grounds assumed or exhibited and charged in said bill, to invoke the aid of your honors in the removal of nuisances from public rivers and highways, or to prevent any injury being done thereto, or to enjoin the defendant from prosecuting the works in which it is engaged under its charter. And this defendant is further advised, and insists, that the Congress of the United States had and has full power and authority to grant to this defendant the charter of incorporation under which it exists, and to authorize the construction of the works in which it is engaged; and that this defendant has in no particular transcended the power and authority conferred by said charter; but it is merely doing, and has merely done, what is allowed, permitted, and required by said charter. And this defendant is advised that the validity of said charter, and of the acts and doings authorized, permitted, and required under the same, cannot lawfully be questioned in this honorable court, or in the manner in which said complainants have exhibited. And these defendants pray to have the full benefit of all and every of the said objections to the form and scope of said bill, and to the regularity of said proceedings, and to the jurisdiction of this court, and to the relief prayed, as fully and completely as if the same had been taken by way of plea or demurrer to the said bill of complaint, and that they be hence dismissed with their costs in this behalf sustained.

And further protesting against all and every ground of jurisdiction and relief, as exhibited and contained in the said bill of complaint contained, this defendant, by way of answer to said bill, says—that it was duly incorporated by an act of Congress, made and passed on the 26th day of May, 1830, as by reference to the said act, which it is prayed to be taken as part of this answer, will more fully appear. That the said charter of incorporation was granted with the full knowledge and acquiescence of the corporate authorities and the citizens of Georgetown—that the right to construct an aqueduct across the river Potomac, and to extend the Chesapeake and Ohio Canal to Alexandria, had been originally claimed and insisted upon by the

citizens of Alexandria at the time the subscriptions were made to said Chesapeake and Ohio canal, and the right to construct said aqueduct and canal had been formally recognized by the corporate authorities and citizens of Georgetown. That the said charter of incorporation confers free power and absolute authority to make and construct said aqueduct and canal; and that a large amount of money has been obtained and expended, and as this defendant confidently believes, an ample amount has been and will be furnished to complete this great and valuable object of internal improvement, and this noble monument of the enterprise of the citizens of Alexandria.

And further answering this defendant says, that in the original undertaking, and in the prosecution of this work, this defendant, its officers and agents, have had no feeling or wish inimical to Georgetown, or to any of its interests, or those of any of its citizens; and it denies what seems to be more than intimated in said bill, that any injury or damage has been done by this work to the harbor of Georgetown, or the navigation of the Potomac, much more that any such damage or injury has been wantonly or unnecessarily done.

And further answering this defendant says, that as soon as a sufficient amount of funds had been raised to justify the commencement of its operations, this defendant employed competent and able engineers and agents to prepare the necessary plans for the construction of said aqueduct—that the engineers were gentlemen every way competent from their having experience and ability to conduct so important an operation—that the plans of the general work, and of the details, were formed with skill, judgment and ability, and they have been prosecuted with diligence and fidelity. This defendant believes that the said aqueduct has been planned, and its construction so far prosecuted in the most scientific manner; and that if any injury has occurred, or shall occur to the navigation of the river, or to the harbor of Georgetown, which this defendant by no means admits, it is the necessary and inevitable result of the work itself, and cannot be attributed to any error in the plan, or any unskilfulness in the execution.

And further this defendant says, that the contemplated aqueduct, when completed, is designed to consist of, and rest upon, eight stone piers laid on the solid bottom of the Potomac river, and two abutments, one on either shore, agreeably to the draft of said plan herewith submitted:—that said piers and abutments are to be built of stone, as the most suitable material—that no other material can be found equally suitable for the purpose—that the mode in which said piers are being erected, and are actually completed, is by means of a coffer dam, sunk in the river upon the site of said piers respectively. This coffer dam is made to rest upon the bottom of the river, and is composed of double rows of piles driven into the bed of the river at an interval of 12 or 13 feet between the rows, and this interval filled with solid masses of clay, so as to be, as far as practicable, impermeable to the surrounding water. It must be obvious that the intention of this dam must be much larger than the pier to be constructed within it, so as to admit of sufficient room for the materials and workmen. For the greater part of the distance across the river the rocky bottom of the river has a mess of sand and earth upon it to the height of about feet, as will also appear by the draft accompanying this answer; within the dam this earth must be removed to the entire depth, and the pier erected upon the solid rock bottom. It is obvious then that, when the pier is completed, there will remain round its base a hollow, from which the earth had been origi-

nally removed—and the plan which has been adopted in this part of the work has been, after the completion of the pier, to remove the clay from the position it occupied between the two rows of piles as far down as practicable, and then removing the inner piles, the residue of the clay would naturally and necessarily find its way into the cavity round the pier, which would be filled up before any part of it could be swept off, by the ordinary currents of the river.

This defendant is satisfied, and therefore avers, that such plan of operations was employed in the construction of the pier already completed, and in that now constructing, and that little, if any, of the clay thus employed, has been swept down the river from the immediate vicinity of the pier. And it is believed that there is no other practicable mode of erecting the piers in question, and that no one competent to the task, or skilled in such works, would think of constructing coffer dams without making them of double rows of piling, and filling the interval between the piles as above stated. In any other mode, this defendant thinks it would be impracticable to keep the water out so as to build the piers, and in no other mode could the work be securely done.

And further answering this defendant says, that during the present freshet in the Potomac river, the rush of water was so violent as to wash away, in several places, the original deposite of sand and earth from the rocky bottom of the river, in the immediate vicinity of the coffer dam now standing in the river. The effect of this was to leave the outer row of piles in such places without any support; they being retained in this perpendicular position by being driven through this earthy bottom.

The removal of this exterior support endangered the entire dam; and the only practicable plan, to prevent the threatened damage, was immediately to throw new clay in the bottom thus created; being much denser and more tenacious than the original deposite, less was required; and the clay thus thrown in was insufficient to fill up the cavities which had been washed out. This defendant confidently submits, that no better mode can be devised to accomplish the object now less objectionable; none less calculated to impair the navigation of the river, or to fill up its channel. And it is believed the complainants have been wholly misinformed, as well of what this defendant has really done, as of the consequences likely to flow from it. And this defendant says, that without questioning the skill and engineering talents of complainants, it would have been more satisfactory to this defendant, if instead of the positive averment that the said aqueduct could be built without the use of clay as aforesaid, the complainants had condescended to inform the public in what manner this could be accomplished, as the discovery might prove not only highly beneficial to the defendant, but invaluable to the community. If, however, the complainants rest this assertion upon the information derived from the witness Easby, whose deposition is annexed to their bill, defendant can only say that the complainants are singular in reposing any great confidence in the ability or engineering experience of that individual. This defendant admits that an assurance was given, that the clay deposited as above in the coffer dam should be removed as above stated, and avers that every such assurance has been substantially fulfilled, and calls upon complainants to specify and prove in what respects it has not.

And this defendant denies that any clay has been thrown on the outside of the dam, and in the open river, since the interview with Capt. Turnbull, mentioned in said bill; but positively avers, that the whole of this part of

the work had been accomplished the day before said interview, and no occasion has existed for its being since renewed; nor does this defendant admit that the conference with Capt. Turnbull has been correctly stated by complainants. Defendant knows only of what passed from the representations of Capt. Turnbull; but having the most implicit confidence in that gentleman, has no hesitation in saying, that the very respectable gentlemen with whom the conference is alleged to have occurred, have misapprehended its import and its temper. The proceeding was not placed on the ground of economy; nor was any disregard exhibited as to the wishes or interests of Georgetown. The facts were simply stated as they have been above repeated; and a confident belief expressed that no injury had arisen, or could arise, from what had been done—that the necessity requiring the clay to be thrown into the river, outside of the dam, had been produced by an extraordinary freshet, the recurrence of which was not to be anticipated, and that it could not possibly be productive of the consequences which were apprehended. And further this defendant says, that the washing away of the original deposite, in the vicinity of the coffer dam, is not fairly attributable to the works of the aqueduct, because such washing was limited in its extent; it took place in other parts of the river, where those works could not have operated such a result, and because, even had the entire aqueduct been completed, a more extensive range for the water to pass would have remained unobstructed, than is afforded, at a point a small distance above, and at another a short distance below the aqueduct. And this defendant further says, that the effect produced upon the current of the water in the Potomac river by the said works, is similar in character to that which the corporate authorities and citizens of Georgetown have long been anxiously desirous to produce. They caused the channel between Mason's island and the Virginia shore to be closed by a causeway, for the purpose and with the hope of throwing the strength of the descending current from that shore towards the wharves in Georgetown. A similar result must flow from the construction of the abutment and piers which are now constructing for the aqueduct. It is idle and unphilosophical to attribute to the works of this defendant the partial filling up of the channel, which had been deepened by dredging below Georgetown. As well might the increased temperature of our atmosphere in June be attributed to the lighting of the lamps, during an evening session of Congress, without reference to the augmented influence of the solar rays, as this effect be attributed to the works constructed and constructing by this defendant, while the powerful causes which have been for ages operating, incurred as they have been by the frequent and serious breaches in the Chesapeake and Ohio Canal, are wholly forgotten or disregarded. This defendant is able to show, by the plainest mathematical demonstration, that the entire mass of clay which has been exposed to the action of the currents of the river, after being deposited in and around the coffer dams at the aqueduct, would not have elevated the bottom of the great space which it must have been diffused over, had it been swept from its position at one instant of time, more than the thickness of an ordinary wafer. But while the bridge over the Potomac, at the city of Washington remains, and the river continues to traverse a country which cultivation exposes to abrasion, more earth must be brought down its waters, and deposited near the head of navigation at every tide, than would be used in the entire construction of the defendant's aqueduct.

And this defendant further answering says, that it has been advised and

believes that the allegations in respect to the financial inability to complete the projected aqueduct and canal, are as entirely irrelevant as they are unfounded. That no reason exists to doubt that they will be completed, and that this is not the place or the tribunal where this matter can be satisfactorily adjusted, or beneficially investigated. It demurs, therefore, to so much of said bill as calls for a development of the resources upon which reliance is placed, or which asks for a suspension of the work until a full measure of means are supplied. If, however, it will afford any light on the subject, or any gratification of the curiosity of complainants, this defendant, under protestation, appends to this answer an estimate of the probable cost of the whole work, made some time since by persons believed to be competent to the task—showing that the completion of the aqueduct is entirely within the capacity of those interested in its accomplishment; and that very recently a subscription of $250,000 has been authorized and directed for the prosecution of this work.

All which this defendant is ready to aver, maintain, and prove, &c., as this honorable court shall award,—wherefore this defendant prays to be hence dismissed, with *their* reasonable costs and charges in this behalf, most wrongfully and unjustly sustained.

THOMPSON F. MASON,
Pres't of the Alexandria Canal Company.

DISTRICT OF COLUMBIA,
Alexandria County, to wit:

Personally appeared Thompson F. Mason, President of the Alexandria Canal Company, before the subscriber, a justice of the peace in and for the county aforesaid, and made oath in due form of law that the several matters and things stated in the foregoing answer, so far as stated upon the knowledge of the Alexandria Canal Company, or of the president and directors thereof, are true, and so far as stated upon the information of others, he believes to be true.

Given under my hand this day of July, 1836.

GEO. WISE.

At a meeting of the board of directors, held this 14th day of July, 1386, an answer (hereunto annexed) to a bill of complaint and injunction, exhibited against the Alexandria Canal Company, by the Mayor, Recorder, Aldermen and Common Council of Georgetown, in behalf of themselves and citizens of said town, in the circuit court of the District of Columbia, for the county of Washington, was read—

Therefore it was upon motion ordered, that the seal of the Alexandria Canal Company be affixed to said answer, and that the same be adopted and filed as the answer of said company.

Extracted from the minutes.

[L. S.] JOHN H. CREASE,
Clerk A. C. C.

Affidavit of Capt. Wm. Turnbull.

DISTRICT OF COLUMBIA,
Washington County, ss.

Captain Wm. Turnbull, being first duly sworn, says that he was engaged in the service of the Alexandria Canal Company previous to the commence-

ment of their work over the Potomac river at Georgetown, and that he has continued ever since in charge of said work—that the mode adopted for the construction of said work *was* adopted as the best possible known to the parties engaged in it, and as the most usual and *appropriate* to the situation of the river, and *bottom* on which it was to be erected—that previous to the adoption of this plan, an effort had been made by certain contractors in service of Alexandria Canal Company, to erect a pier in a coffer dam of a different construction, which plan William Easby at the time informed this deponent was his plan; that said plan was at the time, by this deponent and other engineers, considered as insufficient, and the event proved that *it was so*.

It was abandoned and carried off by a very ordinary freshet.

The deponent further says, that the site fixed upon for the aqueduct is the same which deponent was informed was fixed on by Judge Wright, the then engineer of the Chesapeake and Ohio Canal Company, and under an engagement made between the companies, by whom it was understood the site was to be fixed on by the engineer of said Chesapeake and Ohio Canal Company.

That no objection was ever made to this deponent by the authorities of the city of Georgetown, or of the citizens thereof, to the site thus selected, nor was any objection ever made as to the mode ef construction adopted by deponent, except that shortly after the commencement of the causeway, to wit: on the 6th of June, 1834, the mayor of Georgetown called on deponent to complain that he had been informed that the carts were throwing large quantities of clay into the river without any protection whatever; but upon showing to him the plan of the work, and that the terms of the contract required that the stone walls enclosing the embankment were to be kept in advance of the earth, he appeared entirely satisfied, and expressed no further objections; and said mayor of Georgetown also made some inquiry or objection to the clay being thrown into the river within the coffer dams. The deponent informed the mayor his intention was to take off again, as the piers were finished, the upper part of the clay which had thus been used, and would leave only so much as would be necessary to fill up the vacuum around the pier created by the previous removal of the mud—at which explanation the mayor said he was satisfied that no injury could result from the plans, and requested that the engineers would state in writing the plans of the work, and said that he would submit them for the satisfaction of the citizens generally.

And the deponent says, that in the pier which has been erected, this has been faithfully done; that at low tides the clay was from time to time dug out and removed, and when a sufficient quantity had been thus taken away, the inner row of piles were first pulled up, so as to throw the remaining portion of clay into the space between the pier and the dam which had previously been filled by mud.

The deponent further says, that no clay or earth has been thrown into the river to the injury of the navigation, so far as he is informed; on the contrary, every precaution has been adopted to prevent injury, or even causeless alarm on the subject.

That about the second of June last a freshet occurred, far greater than is usual in the Potomac, than had been seen by the deponent on any previous occasion, the water being raised by it five feet seven inches above the ordinary level of high tides; and a subsequent freshet, of June 28th, was three

feet five inches above high tide, and this was far above any freshet which has occurred since the personal observation of deponent was drawn to this subject, being for a period of four years; that the first of these freshets washed out from the bed of the river, in places, a portion of the mud and sand which had been previously deposited upon its rocky bottom; that this occurred in immediate contact with a part of the piles supporting the coffer dam; and with a view of making the feet of these piles steady, it became necessary to throw some clay into the river immediately against these piles, permitting the same to take its natural slope in the water; that the quantity thus thrown in was much less than the mud which had been carried off; that no clay or earth for the purpose was thrown in previous to the great freshet, but was so thrown in immediately after it, and before the second freshet; that the second freshet, though unusually great, carried off no part of the clay so thrown in, as deponent has most satisfactorily ascertained by repeated observations and soundings.

He further says, that in the line of the aqueduct itself, a similar washing or deepening of the bed of the river was occasioned by this freshet, and that too where the water-way now open is upwards of 850 feet—that is, between the pier now erecting and the Georgetown shore.

And the deponent further says, that in the course of construction adopted, and with the precautions heretofore used and intended to be carefully continued, no injury whatever, as he believes, either has been done or will be done to the harbor of Georgetown, or the navigation of the river below.

The deponent further states, that in the "interview" with certain gentlemen of Georgetown, that he did not claim as a "*right*" to do what those gentlemen complained of, but that he distinctly stated to them that it was a great emergency which caused him to revert to the means he did to sustain his work, and that upon a recurrence of a similar emergency he would feel bound to do the same.

W. TURNBULL.

Sworn to and subscribed before me.

N. B. VAN ZANDT, J. Peace.

Affidavit of William Batt.

William Batt, being first duly sworn, says he was employed for several years by Gen. John Mason to keep his ferry at Georgetown; that he still continues to live in the neighborhood of said ferry, and has for several years past lived in Georgetown, immediately fronting the ferry; that he has during all this time occasionally been employed on the ferry, and is intimately acquainted with its situation.

He further says, that for several years past he has perceived no essential change in the depth of water at said ferry, on the Virginia side of it.

That during low tides and northwest winds, for several years back, it has been difficult to approach the Virginia shore in the boat, and sometimes this could not be done; that at low tides you might walk around the ferry wharf entirely dry, and that has been the case at least four or five years ago, and longer.

He further says, that one and the chief source of filling up the river at the ferry on the Virginia side, is the wash from the hills bringing in a great

quantity of sand, and which from time to time it has been found necessary to take out.

his
WILLIAM × BATT.
mark.

Sworn before me, this 13th day of July, 1836.
WILLIAM WATERS, J. Peace.

Robert Goodwin's Affidavit.

Robert Goodwin, being first duly sworn, says that he has for many years been well acquainted with the ferry at Georgetown; that he has heard the statement made by Mr. Batt, and he considers the same entirely correct; that he has frequently, in a small boat sailing for pleasure, and not drawing more than from 12 to 18 inches, grounded on that side near the ferry. And it is well known to deponent that for many years the water has been very shoal on that side, and he does not perceive that there has latterly been any great or sensible change in this result.

ROBERT GOODWIN.

Sworn to, this 13th day of July, 1836, before me.
WILLIAM WATERS, J. Peace.

Affidavit of Benjamin F. Miller.

Personally appeared Benjamin F. Miller before the subscriber, a justice of the peace in and for the county of Washington, and being first duly sworn, says that he has regularly and constantly for some time past engaged as a superintendent on a portion of the works of the Alexandria Canal Company, now constructing in the river Potomac, near Georgetown; that previous to the very heavy freshet which took place in the first week in June, no clay or earth had been thrown into the river outside the coffer dams; that subsequently to that freshet, so much clay was thrown around the feet of the piles in the coffer dam as found necessary to steady the feet of the piles; that on the 24th June the last portion of the clay so used was thrown in, and that since that day he is confident no clay or earth whatever has been thrown into the river outside the coffer dams. The company have since that time added clay to their causeway, which is included in stone walls on each side, and which is to terminate in the abutment now in the course of construction, and which is to be of solid masonry.

He further states, that a small part of the end of the causeway then forming was removed by the said freshet, that is to say about thirteen feet of it, making in quantity not to exceed one hundred yards of earth; that he has sounded along the edges of said embankment, or where it is united to the abutment, and finds the stone to extend out fully to the coffer dam, being a little dipping and below the surface of the water. He does not doubt that a quantity of the earth thus removed by the freshet was spread down and still contained within these stone walls.

The deponent further says, that the first freshet above spoken of raised the water to a height of 5 feet 7 inches above ordinary high water mark, and that second freshet, which occurred about the 28th June, raised the water to 3 feet 5 inches above high water mark; which is much greater than

any ordinary freshet of this river, and much greater than any freshet which has occurred in the river since the commencement of the work by the Alexandria Canal Company, in the year 1833.

The deponent further says, that subsequent to the second freshet (or that which occurred 28th June) he repeatedly sounded around the dams, and ascertained beyond doubt that no part of the clay which had been thrown outside the dam and around the feet of the piles had been taken off by it.

BENJAMIN F. MILLER.

Sworn to, this 13th day of July, 1836, before me.

WILLIAM WATERS, J. Peace.

Affidavit of Timothy O'Neale.

Timothy O'Neale, being first duly sworn, says he is well acquainted with the work now constructing by the Alexandria Canal Company, in the river near Georgetown; that he has been employed much about said works, as was so engaged immediately after the great freshet in the early part of June, and had recently before that seen the state and condition of the causeway then forming; that he knows the stone walls intended to extend along the side of the causeway do now extend to the piles driven for the abutment intended to form the termination of the causeway; that the freshet took away a part of the end of the causeway then forming, (in all he is not satisfied,) not exceeding an hundred yards, and from the narrow part of the causeway as then extended, and the stone walls being only for a short distance under the surface of the water, he has no doubt that a large part of the clay thus taken from the end of the causeway was still left within the extended walls.

He further says he knows of no other instance in which any clay has been taken off from the works, or carried into the river, which could do any manner of injury to the navigation of the river.

TIMOTHY O'NEALE.

Sworn to before me, this 13th day of July, 1836.

WILLIAM WATERS, J. Peace.

Affidavit of James Rotch.

James Rotch, being first duly sworn, says that he is engaged in forming the causeway now in course of construction by the Alexandria Canal Company, near Georgetown, and has been so engaged for some time past, and previous to the first of June last. That he well knows that the stone walls alongside the causeway extend to the piles now driven for the abutment. The said stone walls for a short distance only dipping and being under the surface of the water as they approach the abutment. The extension of the causeway was made between these walls, and as narrow as could be done for the passage of two carts. That by the first, or great freshet, a portion of clay was taken off from the end of the causeway thus formed; but he believes very little of it could be carried outside these extended walls.

He further says that he does not know of any clay having been thrown into the river and outside the coffer dams since 24th June. He further says that on the end of the causeway which was washed off, that after the freshet it remained so shallow that it became necessary to place an empty scow next the causeway in order to load a scow with clay which it became neces-

sary to carry from it. He further says that at common high tide previous to the freshet, the end of the causeway and which was washed off, did not exceed ten feet in height above water. He further says that whilst the freshet continued, and the current in the river in consequence of it, no earth or clay was thrown into the river even at the end of the causeway; this being avoided in consequence of orders to that effect from Capt. Turnbull, and lest any part of it whatever might be washed into the river.

JAMES ROCHE.

Sworn to before me, this 13th day of July, 1836.

WILLIAM WATERS, J. Peace.

Affidavit of James Owner.

DISTRICT OF COLUMBIA,
Washington County, ss.

James Owner, being first sworn, says that he is now and has been for thirty years past engaged as a master builder at the navy yard, in the City of Washington. That he was engaged in this capacity in said navy yard some years since, whilst a coffer dam was attempted for the purpose of forming a dry dock. That this work was under the direction and management of William Easby, and the deeper part of said dam was in 12 or 14 feet water. The deponent had every opportunity of seeing and examining the progress of the work on said dam; that the said dam was never completed, but, on the contrary, was a complete failure, entirely failing of the objects intended, and was finally given up and abandoned.

The deponent at the time the work was progressing was clearly of opinion that the work was not sufficiently strong, and expressed his opinion to that effect, and for himself felt no disappointment in the result.

JAMES OWNER.

Mr. Owner objects to swearing in the usual manner to the facts above stated, but acknowledges his signature affixed to the same, and declares that the same are true.

Before me, this 14th July, 1836.

N. B. VAN ZANDT, J. Peace.

Affidavit of James Bright.

DISTRICT OF COLUMBIA,
Washington County, sct.

Personally appears James Bright, and being duly sworn, the said James Bright says he has been engaged in the navy yard at Washington about 15 years; that he well recollects the coffer dam attempted by Wm. Easby some few years since at this yard, but the said dam blew up, and was an entire and complete failure. The deponent, however, does not know that Mr. Easby had the chief or entire control of this work, but he knows that he was concerned in building the dam, and there was no other such dam attempted within 15 years past.

JAMES BRIGHT.

Sworn to before me, this 14th July, 1836.

N. B. VAN ZANDT, J. Peace.

J. J. Abert to R. S. Coxe, Esq.

Sir:—I am decidedly of opinion that no obstruction or impediment can result to the navigation below Georgetown, that can be considered more than imaginary, from the construction of the aqueduct and method of construction pursued. This method is the most approved, and in accordance with the principles and practice of civil engineering, and I doubt the success of any other.

J. J. ABERT, Topo. E.
July 14, 1836.

R. S. Coxe, Esq.

Estimate of cost of Bridge and Aqueduct.

Estimate by Capt. Turnbull of the cost of an Aqueduct and Bridge at Georgetown:

Estimated cost of piers, abutment and causeways, as per accepted plan of the Potomac aqueduct, originally contracted for by Messrs. Martineau and Stewart,	$210,407	83
For trunk of aqueduct, 1059 feet wooden superstructure, on J. Town's plan,	43,630	80
Total cost of aqueduct exclusive of G. T. abutment	$254,038	63
Increase of piers and abutment necessary to the erection of a wooden bridge alongside the aqueduct, including expense of erection 8,697 cub. yds. at $11,00 per yard,	95,667	00
Increase in width of causeway by a prism of earth 53 + 30 + 350, (slope walling and aprons remaining the same) 20,611 cub. yds. at 25 cts. per. cub. yd.	5,152	75
Macadamizing ditto,	669	60
Wooden superstructure on Town's plan, 1059 feet,	43,630	80
	$145,120	15
The cost of aqueduct, exclusive of Georgetown (as per above) abutment,	$254,038	63
Total cost of wooden bridge parallel to it,	145,120	15
Total expense of aqueduct and bridge,	$399,158	78

Rule. Replication.

Thereupon on motion of the said defendant, by their solicitor aforesaid, it was ordered by the court that the said complainants enter a replication to the answer aforesaid, or in default thereof, that the said bill be dismissed; thereupon the said complainants, by their solicitor aforesaid, filed in court here the following replication, to wit:

General Replication.

The replication of the Mayor, Recorder, Aldermen and Common Council of Georgetown, complainants, to the answer of the Alexandria Canal Company and William Turnbull, defendants.

These complainants saving and reserving to themselves all and all manner of exceptions, &c. for replication to the answer of said defendants, say that they do and shall aver, maintain and prove their said bill to be true and sufficient in the law, to be answered unto by said defendants, and that the answer is very uncertain, evasive and insufficient in the law to be replied unto by the repliants; without that, that, &c.

F. S. KEY, Solicitor for Complainants.

Cause set for hearing, &c.

Whereupon with the consent of the parties aforesaid, by their solicitors aforesaid, and by the order of the court heard thereon, the said cause is set for hearing, on the bill, answer, exhibits, general replication, and affidavits.

Bill dismissed.

Whereupon the bill, answers, &c., being seen, heard and read by the court, and the parties aforesaid, by their solicitors aforesaid, being heard, and the several matters and things being fully understood, it was ordered by the said court, on mature deliberation, that the complainants' said bill be forthwith dismissed.

Appeal prayed.

And thereupon the said defendants, by the solicitor aforesaid, pray an appeal from decree aforesaid, so as aforesaid rendered, to the Supreme Court of the United States, and it is granted them; whereupon the said defendants, by their solicitors aforesaid, files in court here a certain writing obligatory, commonly called an appeal bond, and which is contained in the following words, to wit:

Appeal Bond.

Know all men by these presents, that we, John Cox, James Dunlop, and John Mountz, are held and firmly bound unto the Alexandria Canal Company in the full and just sum of two hundred dollars, to be paid to the said Alexandria Canal Company, its certain attorney or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals, and dated this 20th day of December, in the year one thousand eight hundred and thirty-six. Whereas lately at a circuit court for the District of Columbia, sitting for the county of Washington, as a court of equity, in a case wherein the Mayor, Recorder, Aldermen and Common Council of Georgetown were complainants, and the Alexandria Canal Company and William Turnbull defendants, a decree was rendered against the said Mayor, Recorder, Aldermen and Common Council of Georgetown, and they having entered an appeal to the Supreme Court of the United States.

Now the condition of the above obligation is such that if the said Mayor, Recorder, Aldermen and Common Council of Georgetown, shall prosecute

their appeal with effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void, otherwise to be and remain in full force and virtue.

JOHN COX, [SEAL.]
JAS. DUNLOP, [SEAL.]
JOHN MOUNTZ. [SEAL.]

Signed, sealed and delivered in presence of:
E. M. LINTHICUM.

Approved:

W. CRANCH.

Clerk's Certificate.

Which being read and heard, and the securities in the said bond being by the court here approved, it is therefore ordered by the said court here that the record and proceedings aforesaid, with all things thereunto relating, be transmitted to the said Supreme Court of the United States, and the same are transmitted to the said court accordingly.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said circuit court of the District of Columbia, for the county of Washington, this 23d day of January, 1837.

[SEAL.] W. BRENT, Clk.

Citation.

DISTRICT OF COLUMBIA, *sct.*

The United States of America to the Alexandria Canal Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of January next, pursuant to an appeal from the decree of the circuit court of the United States for the District of Columbia, sitting as a court of equity for the county of Washington, in a cause wherein the Mayor, Recorder, Aldermen, and Common Council of Georgetown are complainants, and you are defendant, to shew cause, if any there be, why the decree rendered against the said Mayor, Recorder, Aldermen and Common Council of Georgetown, in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. William Cranch, chief judge of the circuit court of the District of Columbia, this 20th day of December, 1836.

W. CRANCH.

DISTRICT OF COLUMBIA,
Alexandria County, to wit:

Daniel Minor appeared before me, a justice of the peace for the county aforesaid, and made oath that on the 24th day of December, 1836, he delivered a true copy of the within citation to Thompson F. Mason, President of the Alexandria Canal Company, of Alexandria. Given under my hand, this 24th day of December, 1836.

GEO. WISE.

(ADDITIONAL.)

Corporation of Georgetown, vs. Alexandria Canal Company.

It is admitted among the proofs in the cause, that at the meeting of the stockholders of the Chesapeake and Ohio Canal Company, on day of September, 1828, the persons representing the Georgetown Corporation voted for the resolution recommending an application to Congress to extend the Chesapeake and Ohio Canal to Alexandria and the Eastern Bridge, and directing the engineer of the company to fix the site of the northern abutment of an aqueduct over the river for the Alexandria canal, and agreeing that the Chesapeake and Ohio Canal Company should construct the northern abutment.

They also at the same time voted against the resolution for extending the Chesapeake and Ohio Canal below the head of tide navigation.

Also, that the corporation of Georgetown, in 1829, passed a resolution approving and acquiescing in the extension of the canal to Rock creek and the Tiber.

Also, that the river is navigable for three miles above Georgetown for all such vessels as can come to Georgetown—that for several years past no trade has been carried on above Georgetown except in stone; and that article, as to the District market, is carried on in boats without masts; and that on the Virginia side up to the head of navigation there is a high bluff bank, and no road leading from the river—which whole river side belongs to the United States Bank and Mr. N. Frye; and that they have by agreement with the Alexandria Canal Company received compensation in the way of damages for the obstruction of navigation to their stone quarries—which is the only injury which they claimed to exist. On the Maryland side, the canal runs generally near the river, but in some places there are cultivated grounds and houses between the canal and the river; there are also two fishing landings on the Maryland side of that part of the river, a mill, and very extensive stone quarries on both sides of the river, above the canal on the Maryland side of that part of the river.

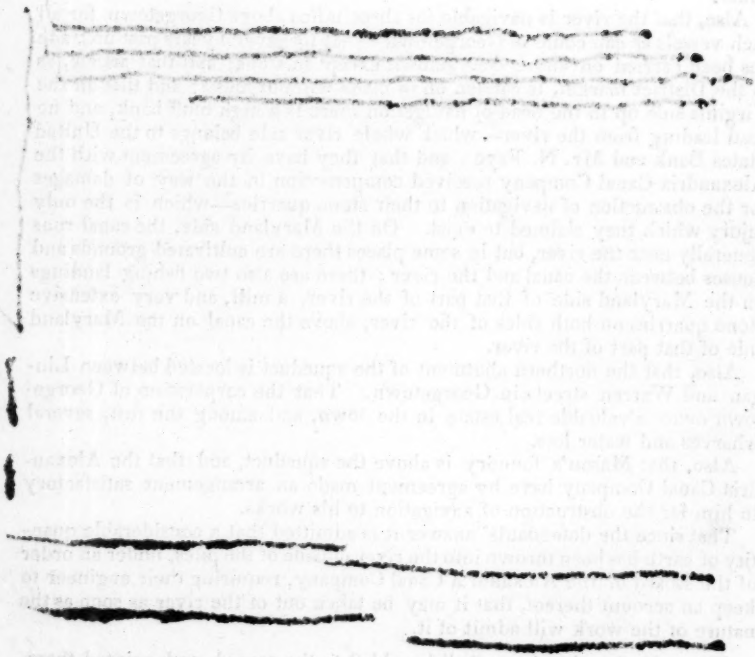
Also, that the northern abutment of the aqueduct is located between Lingan and Warren streets in Georgetown. That the corporation of Georgetown owns a valuable real estate in the town, and among the rest, several wharves and water lots.

Also, that Mason's foundry is above the aqueduct, and that the Alexandria Canal Company have by agreement made an arrangement satisfactory to him for the obstruction of navigation to his works.

That since the defendants' answer it is admitted that a considerable quantity of earth has been thrown into the river outside of the piles, under an order of the Board of the Alexandria Canal Company, requiring their engineer to keep an account thereof, that it may be taken out of the river as soon as the nature of the work will admit of it.

We agree that the above shall be added to the record, and printed therewith in the case of the Georgetown Corporation against the Alexandria Canal Company.

F. S. KEY, for Complainants.
T. F. MASON, for Defendants.



At an adjourned meeting of the freeholders of the town and county of Alexandria, at the court house, on Tuesday, the 31st of July, 1827 Thomson F. Mason, Esq. mayor, resumed the chair, and Humphrey Peake, Esq. as secretary.

The committee appointed at a former meeting made the following report:

The committee, to whom were referred sundry resolutions of the freeholders of the town and county of Alexandria on the 21st instant, having had the same under their most serious consideration, have unanimously adopted the following resolutions, which they beg leave to report:

Resolved, That it be recommended to the common council of Alexandria, to subscribe to the Chesapeake and Ohio canal the sum of twohundred and fifty thousand dollars: provided they shall be satisfied that the plan to be adopted for its construction will secure to the town and county a full *participation in its benefits, by affording an opportunity of constructing a lateral canal to the town of Alexandria.*

At a meeting of the president and directors of the Chesapeake and Ohio Canal Company, the 9th day of August, 1828, the following preamble and resolutions were submitted and unanimously adopted:

Whereas, difficulties and doubts exist as to the proposed eastern termination of the Chesapeake and Ohio canal, some of which arise from considerations of expediency, some from respect for the understanding of the corporate subscribers to the stock of the company at the period of their subscriptions, and some from the construction of the common charter; and it is believed that the embarrassment which these difficulties might otherwise occasion the company, may be amicably and satisfactorily obviated:

Be it, therefore, resolved unanimously, that a committee, consisting of Frederick May, Walter Smith, and Phineas Janney, be authorized and instructed to inquire into the expediency of recommending to the general meeting of the stockholders, expected to assemble at the city hall, in Washington, on the 10th day of September next, the adoption of the following resolution, viz:

Resolved, That, in the event that William Wirt, attorney general of the United States, shall be of opinion that the present charter of the Chesapeake and Ohio Canal Company authorizes the extension of the said canal to the western bank of Rock creek, in the town of Georgetown, or the Congress of the United States, in the event that he shall not think so, shall, at the request of the company, authorize such extension, the same shall be so extended in manner following, and upon the conditions hereinafter expressed, viz: "The said canal shall descend from the contemplated basin next above Georgetown to the said town, and to a point therein between Water street and Bridge street, on the same level with the section next above the said basin, and shall pursue a course between the said streets as far down toward Rock creek as shall favor a connexion of the contemplated Maryland branch from the said canal, keeping so far the same elevation; and shall there descend to the western shore of the said creek, by one or more locks, at such elevation above the tide as may suit the construction of a canal, leading thence to the Tiber creek, by the city of Washington, or for the benefit thereof, and by the mouth of Rock creek enter the river Potomac, upon condition that the corporations of Washington, Georgetown

and Alexandria, shall have, upon terms agreeable to themselves, respectively assented to the said extension."

At a meeting the president and directors of the Chesapeake and Ohio Canal Company, the 3d of September, 1828.

The committee appointed on the 7th of August last, on the subject of the location of the eastern termination of the canal, made the following report:

"The committee to whom was referred the resolve of the board on the 9th ult. relative to the proposed eastern termination of the canal, have given to that subject the full inquiry and consideration which its importance demanded, and have unanimously agreed as to the expediency of recommending to the general meeting of stockholders, to be held on the 10th of this month, under all existing circumstances, the adoption of the resolution appended to said resolve.

"At the commencement of their inquiry the committee deemed it expedient to direct a survey from the contemplated basin at the western line of Georgetown to Rock creek; this has been carefully performed by the engineers, and they have laid down, on a plan of the town, two distinct routes for selection, accompanied by an estimate of the probable expense; and which plan and estimate are herewith submitted.

"The plan proposes a continuance of the canal from the reservoir or basin above mentioned, through Georgetown, at an elevation the same as that of the canal now at the Little Falls, as far on as to Congress street, and thence, conforming to the depression of the ground, to descend, by successive locks into Rock creek. By preserving the highest elevation of the canal as far as Congress street, and conducting it at some distance from Bridge street, the committee have consulted the interest of Maryland, of of the city of Washington, and of the government of the United States, by favoring the future extension of the canal on the same level towards the Eastern branch.

"Rock creek, it is proposed to raise, by a dam or mole, at its junction with the channel of the Potomac, to an elevation of about three feet above common high tide water, and thence, descending by a tide lock, to enter the river. The creek, as well as the extensive flats near its mouth, and both above and below the lower bridge, may thus be converted into a useful basin, or harbor for boats, common to both Washington and Georgetown, and alike advantageous to both. Moreover, it secures, by its elevation above tide, the means of a continued canal, along the margin of Washington and the Potomac river, to the mouth of Tiber creek, at a small comparative expense. Whilst, for the benefit of the contemplated branch of the canal to be made by Alexandria, it is proposed that a suitable site be procured, and a proper abutment be erected therefor, to support the commencement of the aqueduct required therefor, as well as for the support of the side of the basin or canal from whence it may be taken."

"The committee, therefore, recommend to the board the adoption of the resolution referred to them, on condition that the terms set forth in their report in behalf of the corporations of Washington, Georgetown and Alexandria, be approved."

After the report of the committee had been read and considered, the following resolutions were unanimously adopted:

Resolved, That the president and directors concur in recommending to the general meeting of the stockholders, to be convened on the 10th inst.

the adoption of the resolution referred to the committee on the 9th day of August last, subject to the modifications contained in their report of this day.

Resolved, That a copy of the original resolution, the report of the committee, and of the resolution of this board thereon, be transmitted to the mayors of Washington, Georgetown, and Alexandria.

Proceedings of the Corporation of Alexandria.

In Council, Setember 4, 1828.

A communication from the mayor, inclosing sundry resolutions of the president and directors of the Chesapeake and Ohio Canal Company, was received and read: whereupon,

Resolved, That the common council of Alexandria do approve of the said resolutions of the president and directors of the Chesapeake and Ohio Canal Company, and agree to such extension of the Chesapeake and Ohio canal as therein stated, on condition that the president and directors of the said Chesapeake and Ohio Canal Company, do pledge themselves and the said company, to provide and secure a suitable site for, and erect thereon, at the time of making the main canal, a substantial and proper abutment to support an aqueduct for a lateral canal, to be taken from the main canal, at such point and elevation as may be fixed upon as most eligible by the company's engineer, above Georgetown, to convey the water for said lateral canal to Alexandria, across the river Potomac, and to provide the necessary basin at the entrance of said aqueduct.

(Extract from the Minutes.)

Test. J. P. THOMPSON, C. C.

Pursuant to public notice, a general meeting was held on Wednesday, September 10, at the city hall in this city, of the stockholders of the Chesapeake and Ohio canal. A very large proportion of the stock was represented, and there were present at the meeting above four hundred persons.

The following resolution, among others, was presented to the meeting on the part of the president and directors:

"And be it further resolved, That the president and directors be, and they are hereby empowered and requested, in the name and behalf of the Chesapeake and Ohio Canal Company, to present to the Congress of the United States a memorial requesting Congress will grant such aid, as may seem to their wisdom expedient, towards the extension of a canal from some suitable point on the Chesapeake and Ohio canal to Alexandria, within the District of Columbia;" "and that the president and directors of this company, be requested to instruct the engineers of the company, to cause a suitable plan to be devised for a connexion, by means of an aqueduct across the Potomac, of the canal of this company with the proposed canal to Alexandria; and that the President and directors, pursuant thereto, construct the northern abutment thereof on such part of the line of the Chesapeake and Ohio canal as, in the opinion of those engineers, may be best calculated for such connexion."

The meeting adjourned to meet again on Wednesday, the 17th inst. at 10 o'clock, A. M.

At a meeting of the stockholders of the Chesapeake and Ohio canal, held at the city hall, Washington, on the 17th September, 1828, by adjournment from the 10th of same month.

The question was taken on agreeing to the foregoing resolution, (offered on the 10th inst.) and decided in the affirmative—yeas 5047.

Extract from the memorial of the president and directors of the Chesapeake and Ohio Canal Company to Congress, dated 6th Dec. 1828:

"Should it be, as your memorialists hope, the pleasure of Congress to favor, by pecuniary aid, the construction of the contemplated branch from the stem of the Chesapeake and Ohio canal to Alexandria, the accompanying memorial from the mayor and common council of that town, soliciting the incorporation of a joint stock company, with authority to construct such a branch, will afford an opportunity of extending such aid, in the same mode in which the wisdom and liberality of the Federal Legislature has already assured the success of several great national works.

The utility of the main canal, from which this branch is to lead, cannot fail to be much augmented by supplying a third market for the numerous and diversified productions which are destined to descend the valley of the Potomac, and another inlet for their valuable returns from abroad.

The Chesapeake and Ohio Canal Company comprehends many citizens of Virginia as well as Maryland. They have now assigned to them, under the sanction of existing laws, the chartered rights of a prior company, which the States of Maryland and Virginia, incorporated by their joint act, in the first years of their independence, and to whose stock those States contributed for the sake of the markets, which they have since ceded to the General Government.

Your memorialists trust that, in referring to the double grant which conveyed to the Congress of the United States, this important district, embracing them, as it still does, the only markets of the Potomac and its tributaries, they may be allowed to add that the inhabitants of Virginia, who disposed of their productions in Alexandria, while that town formed part of their native Commonwealth, still feel a solictude for its prosperity, with which, indeed, their own is in no small degree identified.

There is, however, too much reason to apprehend that, unless the citizens of Alexandria, severed as they are from their parent State, for the benefit of the Union, shall receive its countenance and favor, the Chesapeake and Ohio canal, to which they have liberally contributed their funds in conjunction with their neighbors of Georgetown and Washington, will extend to themselves very few, if any of its benefits.

The broad and unsheltered expanse of water which will meet the canal boats below Analostan Island, and the basin at the mouth of Rock creek and the Tiber, to say nothing of the necessary change, after leaving the canal, of the very principle of their moving power, will arrest their descent short of the harbor of Alexandria, and require a double transhipment of their cargoes to enable them to reach a foreign or distant market through the warehouses of that town. A trade so impeded and burthened could not long survive a struggle with the more favored cities on the opposite bank of the river. A continued canal from the main stem, crossing the Potomac by an elevated aqueduct at or immediately above Georgetown, affords, it is believed, to the southern shore of the District of Columbia, the only chance of a fair competition with the northern.

John P. Ingle, being first sworn, in answer to interrogatories submitted to him, made the following statement:

That he was in 1828, and still continues to be, the clerk of the Chesapeake and Ohio Canal Company; and that he also acted as secretary of the general meetings of the stockholders which were held on the 10th and 17th of September, 1828. That all the extracts and copies of the proceedings of the president and directors of said company and of the stockholders in general meeting as made and set out above, have been examined by him, and are all correctly made. He further says, that copies of these proceedings were transmitted by them on the 3d of September, 1828, to the mayors of Washington, Alexandria, and Georgetown, so far as they had then occurred: That they were all (he believes) published in the newspapers of the day, and were shortly afterwards all published in pamphlet form, a copy of which was sent to the corporate authorities of each of said cities,

He further says, that the report of the committee, recommending, among other things, the extension of a canal to Alexandria, was, on the 10th of September, 1828, referred to a committee for consideration; and that John Cox, Esq. Mayor of Georgetown, was one of that committee.

He says that it does not certainly appear who represented the city of Georgetown at the meeting on 10th September, 1828; but that a special authority was given on 17th September, 1828, to John Mason, Francis S. Key, John Cox, (mayor) and Walter Smith, to repsent that corporation at the meeting of that day. That, by a provision of the charter, no member of the board of directors can act as a proxy on any stock but his own, and General Smith did not therefore vote. That the representatives of Georgetown, at that meeting, appear so have voted for the resolution directing the president and directors to present a memorial to Congress, asking aid towards the extension of a canal from some point on the Chesapeake and Ohio canal to Alexandria. This memorial was accordingly prepared from which the extract above is given, and was signed by the president and all the directors, of which General Walter Smith, of Georgetown is one.

Deponent further says, that it appears Georgetown made no communication of her proceedings in relation to the extension of the canal towards Rock creek, prior to general meeting on 17th September, 1828; but that afterwards the following resolution from the Board of Aldermen and Common Council of Georgetown, was sent to the president and directors of Chesapeake and Ohio Canal Company:

A resolution assenting to the eastern termination of the Chesapeake and Ohio canal, as fixed by the Chesapeake and Ohio Canal Company.

Resolved by the Board of Aldermen and Board of Common Council of of the corporation of Georgetown, that this corporation do assent to, and cordially acquiesce in the first resolution (fixing the eastern termination of the Chesapeake and Ohio canal) submitted by the president and directors of the Chesapeake and Ohio Canal Company to the stockholders thereof, in general meeting, September 10, 1828, as modified and adopted by the stockholders at an adjourned meeting, held on the 17th day of the same month.

WM. JEWETT, Pres't B. C. Council.
JAMES DUNLOP, Rec. and P. B. Ald.

10th February, 1829. Approved.

JOHN COX, *Mayor.*

True copy. Test.
JOHN MOUNTZ, *Clerk.*
JOHN P. INGLE.

DISTRICT OF COLUMBIA, *Washington County, to wit.*

This fifth day of January, 1838, and between the hours of 10 o'clock, A. M. and 5 o'clock, P. M. John P. Ingle, at the office of the Chesapeake and Ohio Canal Company, in the city of Washington, personally appeared before me, a justice of the peace in and for the county aforesaid, and made oath in due form that the matters and things as stated in his foregoing deposition are true.

C. H. WILTBERGER.

Thomson F. Mason, being first duly sworn, says, that he was present, and persided as chairman, at a meeting of the freeholders of the town and county of Alexandria, in July 1827, when the resolution was adopted, recommending a subscription of $250,000 by the Common Council of Alexandria, to the Chesapeake and Ohio canal, on condition that an opportunity should be afforded of constructing a lateral canal to the town of Alexandria; that the subscription was accordingly made by the corporation Alexandria, and a very considerable sum was also subscribed by individual citizens of the town, under the same understanding and expectation: that this resolution and the proceedings of the said meeting of freeholders and of the Common Council of Alexandria, were published in the newspapers of the day, and duly communicated to the stockholders of the Chesapeake and Ohio canal.

The deponent further says, that after a charter had been granted to the Alexandria Canal Company, and after the site for their aqueduct over the Potomac had been fixed on by Benjamin Wright, then engineer in the service of the Chesapeake and Ohio Canal Company, pursuant to a resolution of the stockholders of that company, and before the commencement of their works, an application was made to Congress for aid in the erection of this aqueduct: that, some weeks previous to this application, having understood that Georgetown had been desirous of erecting a bridge over the Potomac, somewhere near to the place now fixed on for the aqueduct, and that their efforts for that object had, before that time, been defeated by the owner of the ferry at Georgetown, near which it was proposed to be placed, this deponent, on behalf of the Alexandria Canal Company, addressed a letter to the mayor of Georgetown, proposing to unite a bridge for ordinary travel, for the benefit of that town, with the proposed aqueduct, upon such equitable terms as they might be able to make with the owner of the said ferry. To this letter no reply was made; and after the lapse of some time, a second letter was written to the same effect, to which there was no answer. Still believing that it would be desirable to a large portion of the citizens of Georgetown; the application of the Alexandria Canal Company to Congress was made to embrace this bridge. When the agents of Alexandria appeared before the Committee of the House of Representatives on that subject, they met the agents or committee on the part of Georgetown. It was stated by them, or one of them, that this idea of a bridge, was an Alexandria proposition, and that they had never heard of it, and were not, of course, prepared to say whether it was desired or not by Georgetown. Their mayor, who was present, and was, it is believed, a member of the committee, on being referred to, acknowledged he had received these letters, and said he had transmitted them to the corporate authorities. With a view of giving Georgetown an opportunity of expressing her wishes on the subject, it was then agreed, in the presence of the Committee of the House of Representatives, that the representatives from Alexandria should meet the corporate authorities of Georgetown, who were to be called together that evening to

confer with them on the subject. Under this arrangement, this deponent, together with William Fowle, Esq. on the part of Alexandria, repaired to Georgetown, and were conducted to a house where they were informed the corporation usually held its meetings. They were there met by many gentlemen, whom they understood and believed to be members of the corporation; several of whom they knew to be such. In the course of the explanations made on the subject, one of the members of the corporation inquired why we had placed our aqueduct so low down, and asked if it would not be better to have it higher up the river, and some distance above Georgetown. On the part of Alexandria it was replied, that we had had no agency in fixing the site, that this had been done by the engineer of the Chesapeake and Ohio Canal Company; and as we were informed, at a point first suggested by a distinguished citizen of Georgetown; that, without yielding to any local jealousy on our part, which would, in fact, be gratified by placing it much higher up the river, we were not entirely satisfied with its position, and should be pleased to agree on a change in this respect. Another member of the corporation promptly said, he was well satisfied, if the work was to be erected, that this was the best place for it; and the suggestions made for this opinion, seemed to this deponent to produce such impression, as, in his opinion, rendered it necessary to say more on this point, and it was not farther pressed. We were distinctly informed in this meeting (which was assembled to confer with us on the subject of the bridge before mentioned,) that, though not sitting in form, with their respective officers at their head, a majority of both boards of their corporation were present, and that whatever was thus agreed upon, they would feel themselves bound to carry into effect. This is more distinctly recollected, because the objection was suggested by a member of the corporation, and we were about promptly to withdraw, when the assurance was made, that they had assembled to confer with us; that a majority of both boards were present, and that they should feel bound by whatever was agreed on. The recorder I know was present, and, I believe, gave, with others, the assurances here stated. The decision finally given on the part of the corporation was, that they should decline to do any thing; that this must be considered an Alexandria proposition; that they stood neutral, and *that Georgetown asked nothing*. This reply was communicated by us to the committee of congress the next morning; and a bill was prepared containing a provision for this bridge, on such terms as we could arrange with the owner of the ferry; but, anticipating that this arrangement might be used to the prejudice of our application, it was so arranged as to permit what related to the bridge to be struck out without injury to any other portion of the bill. As anticipated, the bill was not long in the House before this provision was, *by some means*, rendered odious. As Georgetown claimed to take no part, and *"had nothing to ask,"* when a warm opposition was manifested to this provision, it was instantly, with the assent of our friends, stricken out. When we reached the Senate, we were surprised to meet a memorial from Georgetown, insisting on an amendment of our bill for the purpose of providing a bridge for their benefit. We resisted it, as the late stage which the session had then reached, rendered it apparent to all that an amendment was equivalent to defeat the bill. The amendment was rejected.

An objection to the passage of our bill was then made on the ground that it might or would injure the navigation to Georgetown. A distinguished

Senator, in the debate which ensued, in the presence of this deponent and many others, both from Alexandria and Georgetown, including the mayor and several members of the corporation of the latter, who were in the lobby immediately at the back of the members, promptly and indignantly replied, that the objection came too late; and asked if the charter had not been already granted, and if greater injury could be done if the money were given by Congress than if it were drawn from the people of Alexandria; and said that if *Congress should do any injury to their navigation, Congress was most able to repair the injury it might do.* This was near the close of the session. At the very next session, Georgetown presented a petition, asking for the assistance in removing impediments to their navigation, and 150,000 was granted for this object, with some inferior objects detailed in the act of Congress.

This deponent further says, that on the 27th day of July, 1836, and some time after the injunction in this case had been refused by the circuit court, finding that some further portion of clay was necessary to secure the coffer-dam, which had been so much shaken by the extraordinary freshet which had occurred; and, being unwilling to do any thing to injure Georgetown, or to irritate their feelings, the following letter was addressed to the mayor of Georgetown, and on the same day placed in his hands, and an assurance received from him that it should be immediately laid before the corporate authorities of Georgetown, and their decision promptly made known.

ALEXANDRIA, 27 July, 1836.

To JOHN COX, Esq.

Mayor of Georgetown:

DEAR SIR:—Since the application on behalf of the corporation of Georgetown for an injunction against the Alexandria Canal Company, I have had an opportunity of conversing with several intelligent and prominent citizens of your town, who have assured me that the only wish of Georgetown, in the course which has been adopted, was to protect their town and citizens from any damage that might arise to the navigation of the river, in consequence of the use of clay and earth in the construction of our coffer-dams; and that no hostility to the work itself was intended. I have received these assurances with great pleasure, and beg leave to assure you and the corporation of Georgetown, as I am instructed to do, by the directors of the Alexandria Canal Company, that, without stopping to inquire what might be their legal liabilities, or duties, they have never intended to injure the corporation or citizens of Georgetown, or the navigation of their town, or permit it to be done by one under their control or direction. And to show the entire sincerity of this declaration, I am authorized by the board of directors to make a proposition which (with the views I am assured are entertained by your corporation) must at once put an end to all difficulties on the subject.

The canal company will agree that the engineer in charge of the work, shall keep a strict and and accurate account of all the clay and earth, that may at any time become necessary, to put into the river about their works, and that as soon as the object is effected for which it is used, it shall be again taken up, and removed; and, in case any part of the clay thus used, shall be carried down the stream, and removed by any freshet, before it be taken up, that then a like quantity of earth or sand, shall be removed by

the canal company, from any part of the harbor or channel leading to Georgetown, (between said town and the Washington bridge,) that may be designated by the authorities of Georgetown; and in order to secure a faithful compliance with this undertaking, the canal company will further agree that the engineer, before any clay or earth, whatever, shall at any time be thrown into the river, shall make a statement of the sum which will become necessary for its removal, and this sum shall immediately, before the use of the clay, be placed in some bank in the district of Columbia, to the credit of the said engineer, to be by him drawn out and applied to the purpose of said removal, as soon as the same can be done, consistent with the true intent and meaning of this agreement. In short, we are to remove all the clay and earth, that we may find it necessary to use, and the sums necessary for the removal are to be deposited in advance.

This offer, made in the most candid and conciliatory spirit, must we believe remove the source of every just and reasonable complaint, and we sincerely trust it may be seen in the same light, by yourself and the corporation and citizens of Georgetown.

Allow me, sir, to request the personal favor, that this proposition be immediately submitted to the authorities of Georgetown, as I am obliged to leave home in a few days, and am very desirous that this matter be freely disposed of before I go.

Very respectfully, sir,
I have the honor to be,
Your ob't ser't,
THOMSON F. MASON.
Pres't Alex. Canal Co.

This deponent waited for some eight or ten days, and hearing nothing from the mayor of Georgetown, addressed him a letter by mail, calling his attention to the subject. Still hearing nothing from him, the deponent again wrote—referring to the delay which had occurred, and that having observed a regular meeting of the corporate authorities had taken place, the communication as promised had no doubt been made to them, and further stating that this letter was sent by a special messenger with directions to wait any time that might be desired for an answer. The messenger however returned without an answer, and informed deponent the mayor had said "he had not a pen and ink convenient," but would write by mail shortly. That the received two letters has since been admitted by the Mayor, and that he did not write at any time a reply. No answer was in fact ever given to the offer contained in the letter of 27th July—nor any suggestion even, ever made in what particular, if any, it was thought unsatisfactory, or in what manner it might be modified.

The president of the Alexandria canal, after considerable delay in awaiting this answer, directed the engineer to proceed and to use what clay was essentially necessary for the preservation of the work, and keep an accurate account of the quantity so used, and to take up and remove the same as soon as the progress of the work would possibly admit; that is, to carry out the offer made in this letter, in the same spirit as if Georgetown had answered and accepted it.

This deponent is informed by engineer, has been attended to accordingly.

THOMSON F. MASON.

Major William Turnbull, being first duly sworn, deposes and says, that, shortly after the injunction in this case was refused by the circuit court, it was found necersary to throw in an additional quantity of clay to repair the injury done to the dam by the recent freshet; but this was done under an order from the president of the canal company, accompanied by directions to keep an accurate account of the quantity of clay so thrown in, and to remove it again as soon as the progress of the work would permit. An agreement was then entered into with Mr. Ellicott, the proprietor of a steam-dredging-machine, to remove all the clay thrown around the dam; and a considerable portion of the clay was accordingly taken out: the remainder could not be removed at that time, because there was not room for the dredging machine and our own machinery, without suspending our operations, which could not have been done without great loss of time, &c.; but the remainder will be taken out as soon as the progress of the work will allow, there being no difficulty in so doing.

Before the commencement of the work at the acqueduct, a letter was written to the mayor of Georgetown, proposing a change in the location of the northern abutment. A committee was appointed on the part of the corporation of Georgetown, to confer with the engineers on the subject, but they came to no conclusion in the matter. The site as then fixed on was shown, and explanations given in relation to it, to the committee and the mayor. West of this site there is a small triangular strip of land, purchased for the abutment, beyond which there is not room for a street or other improvements, the towing path of the canal being the bank of the river.

WM. TURNBULL.

William Fowle, being first sworn, says that, previous to the commencement of the aqueduct over the Potomac, he was present in the committee room of the House of Representatives of the United States for the District of Columbia, when an arrangement was made between the gentlemen representing the corporation of Georgetown, and those of Alexandria, to meet the corporate authorities of Georgetown with the view of conferring on the subject of a bridge proposed to be erected in connexion with the aqueduct.

This deponent was one of the representatives of the corporation of Alexandria, and with T. F. Mason, that evening, according to appointment, met the gentlemen in Georgetown, (who he was informed, and believes, constituted the corporation of that town) at the hall or house in which he understood these meetings were usually held. The deponent further says, that he had read the deposition of T. F. Mason, and the same, in substance, correctly details the circumstances as recollected by this deponent. He well remembers that the particular site of the aqueduct was one of the subjects there spoken of, and that Georgetown finally decided to do nothing, and would ask nothing, though no objection was made to the proposed bridge. This was reported to the committee, and a bill prepared as stated in deposition of Mr. Mason. The deponent was present also in the Senate of the United States, and witnessed what there occurred. The mayor of Georgetown was also then present with other members of the corporation of Georgetown. He perfectly recollects the debate which then occurred, and the remarks of an honorable Senator, as detailed by Mr. Mason, and the same are truly and correctly stated as recollected by this deponent.

W. FOWLE.

William Nevitt, being first duly sworn, says, that for thirty years past, he has been intimately acquainted with the river Potomac, between Georgetown and the Little Falls; that he has for many years lived immediately in the neighborhood, and is well acquainted with the business and commerce carried on upon this part of the river; that he has never known a vessel with masts, during all that time, used in any trade or business above Mason's foundry, except in some few instances when small vessels were brought up for stone, to be carried down the Potomac under some contract, as he understood, to furnish stone at the Rip Raps. For some distance above Georgetown the canal runs immediately on the margin of the river, leaving no land or improvements between the canal and the river. Somewhere about a mile above Georgetown commences a flat piece of land between the canal and the river, which extends up to the Little Falls bridge, near three miles above Georgetown, at which place all navigation ceases, even in the smallest boats. All the quarries of stone of value for building purposes are in the hills, between which and the river runs the canal; so that all the stone on this side the river is necessarily and invariably now taken down upon the canal, and with the exception above mentioned, it has always been taken from the Virginia shore in flats and scows.

The flat land along the river as above described, he should suppose, would average about fifty-yards in width, and from what is called the Stone Mill up to the Falls, is called Stuart's land. All of this, with the exception of about two acres, is, in freshets, subject to overflow, and deponent has seen it all covered with water and ice, which in places, was backed up high, except about two acres, on which there is no improvement of any kind. The stone mill is a very old building, and is now in state of dilapidation; but when it was worked, he never knew flour or wheat taken to or from it in any way, except in boats without masts, or in wagons or carts. No masted vessel can approach it; and the flats near this mill for some distance allow only boats drawing very little water indeed. Some portion of the flour made at this mill, since the canal was made, has been carried on the canal.

Deponent further says, that he is well acquainted with what are called the fisheries on these flats. Some years ago some fish were caught here, but they were always carried down to Georgetown in small row-boats or in carts, &c. He never knew or heard of an instance in which any vessel with masts were used in connexion with them. These fisheries have for some years been entirely worthless, partly as he thinks, from the filling up of the river, and from the larger seines below. He considers them now useless, and verily believes they will never be rented again. In short, he says he knows of no possible use for which a masted vessel can be required above the aqueduct, unless it might be at the foundry, and from that, he believes, the canal affords the best means of transportation.

WILLIAM NEVITT.

Samuel Moxley, being first sworn, says, that he has been well acquainted with the river Potomac, from Georgetown up to the Little Falls, since the year 1817; that the general description given of the shore between the canal and river, in the deposition of William Nevitt is correct. That he has himself beeh much engaged in the stone business on this paat of the river, and with the exception of getting stone for the Rip Raps, in which he was partly concerned himself, he never knew or heard of any business in which a mastcd vessel was used or required betweenn Mason's foundry

and Falls' bridge; nor does he think it would now be useful to employ them at the foundry, since the canal has been made. He thinks the mill and fisheries well and correctly described in William Nevitt's deposition, which he has read. Excepting the foundry (and as to that he gives no decided opinion) he knows of no trade or business whatever which would require masted vessels, or in which they could be advantageously used, above the aqueduct now building by the Alexandria Canal Company.

SAMUEL MOXLEY.

Reuben Johnston, Jr. being first duly sworn, deposes and says, that he is clerk of the Alexandria Canal Company; that it appears by the books of said company, that the amount expended on the Potomac aqueduct, for materials, construction, &c. prior to Juy, 1836, was upwards of two hundred thousand dollars, and upon the line of the Alexandria canal, the elevation of which depends upon that of the aqueduct, upwards of two hundred and thirty thousand dollars. That a further subscription to the stock of the Alexandria Canal Company of two hundred and fifty thousand dollars was made by the Common Council of Alexandria, under an act passed 9th of July, 1836, upon which subscription the Council have already paid upwards of thirty thousand dollars, as the same was called for by the canal company. That at the session of Congress of 1836-'7, an act was passed granting to said company three hundred thousand dollars towards the construction of their canal.

R. JOHNSTON, Jr.

DITRICT OF COLUMBIA, *Alexandria County, to wit.*

I, George Wise, a justice of the peace, in and for the county aforesaid, do hereby certify, that the foregoing depositions of Thompson F. Mason, Willaim Fowl, William Nevitt, Samuel Moxley, and Rheuben Johnston, Jr. were duly taken, subscribed and sworn to by the said parties respectively, before me, at the tavern, in the town of Alexandria, now kept by George P. Wise, on the fourth day of January, 1838, and between the hours of 10 o'clock, A. M. and five o'clock P. M. according to notice.

Given under my hand, this 4th day of January, 1838.

GEO. WISE.

ALEXANDRIA, December 23d, 1837.

To JAMES DUNLOP, Esq.

Solicitor for the Corporation of Georgetown:

Dear Sir: In the case of the Mayor, Recorder, Aldermen and Common Council of Georgetown, against the Alexandria Canal Company, now pending before the Supreme Court of the United States, according to the arrangement heretofore made for that purpose, I hereby notify you, that the Alexdria Canal Company will, on the 4th day of Janury, 1838, between the hours of 10 o'clock, A. M. and 5 o'clock, P. M. proceed at the tavern in the town of Alexandria, now kept by George P. Wise, to take the depositions of Wm. Fowle, Reuben Johnston, Jr. and others. And on the 5th day of January, 1838, between the same hours, will proceed at the office of the Chesapeake and Ohio Canal Company, in the city of Washington, to take the deposition of John P. Ingle and others, to be read in evidence on the trial of the above mentioned cause.

Very respectfully, yours, &c.

THOMPSON F. MASON

Pres. of the Alexandria Canal Company.

DISTRICT OF COLUMBIA, *Alexandria County to wit.*

Personally appeared James Chatham, before the subscriber, a justice of the peace, in and for the county aforesaid, and made oath, that on the 25th day of December, 1837, he delivered to James Dunlop, Esq. of Georgetown, a true copy of the above notice.

Given under my hand, this 4th day of January, 1838.

GEO. WISE.